

DEPARTMENT OF THE ARMY
US Army Garrison Aberdeen Proving Ground
Aberdeen Proving Ground, Maryland 21005-5001

APG REGULATION
No. 385-6

1 March 2002

SAFETY
WORKERS' COMPENSATION PROGRAM

The word "he" (and its derivatives) when used in
this regulation represents both the masculine
and feminine genders; exceptions will be noted.

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1. PURPOSE. To establish the responsibilities and procedures for the Workers' Compensation Program at Aberdeen Proving Ground, Maryland.

2. SCOPE AND APPLICABILITY. This regulation applies to the all activities serviced by the Aberdeen Proving Ground Civilian Advisory Center, which includes all Appropriated Fund Federal employees stationed or assigned to Aberdeen Proving Ground. This regulation is not applicable to NAF personnel.

3. GENERAL.

a. This regulation provides information and local requirements for compliance with 20 Code of Federal Regulations (CFR) Benefits relative to the Federal Employees' Compensation Act (FECA) and outlines the responsibilities and procedures of the Workers' Compensation Program for APG. It provides regulatory requirements for reporting personal injuries sustained by civilian personnel assigned to Aberdeen Proving Ground. Non-appropriated fund employees are excluded from this program, and

should seek assistance from the NAF Personnel Division. Injuries and illnesses incurred while in the performance of duty, as well as recurrence of the same injury when it results in additional lost time, are covered by this program. The term injury includes, in addition to a traumatic injury where a time and place can be identified, occupational illness with medically documented causal relationship to work. The FECA provides monetary compensation, medical care and assistance, vocational rehabilitation, and reemployment rights to a Federal employee who sustains a disabling injury as a result of his employment with the Federal Government.

b. A FECA Working Group is established IAW DODI 1400.25-M, Subchapter 810. The group will meet on a monthly basis to evaluate all CA1 and CA2, CA2a Compensation forms, for possible controversion, evaluation for fraud and/or safety investigation of workplace deficiencies. The group should consist of the Injury Compensation Program Administrator, the Workers' Compensation Program Manager, tenant FECA points of contact, CPAC representative, and Occupational Health Nurse.

c. The U.S. Department of Labor (DOL) Employment Standards Administration, Office of Workers' Compensation Programs (OWCP), administers and sets forth all rules and regulations pertaining to employee compensation. Adjudication of all claims is the responsibility of OWCP in Washington, DC; Philadelphia, or the OWCP office responsible for the geographic location of the employee's official home of record. To qualify for benefits, the employee or his survivors must establish a causal relationship between the injury or death and his employment. In addition, the employee or survivor must submit a claim within the time limits established by the FECA. Four basic benefits are available to Federal employees under the FECA program: medical, disability, benefits relating to disability (e.g., medication), financial and death. The FECA also provides for the payment of funeral and burial expenses in case of work-related death. Compensation is also provided for the dependents of a deceased employee within the specifications of OWCP regulations. The APG Workers' Compensation is a liaison between the injured or ill APG employee; however, DOL has the sole authority to authorize medical treatment and financial expenditures.

d. Each employee has the right to personally contact his DOL claims examiner concerning any issue he may have with his established claim. Each employee is encouraged and expected to work with the FECA Administrator in handling his claim and provide a copy of all documentation relative to the claim. The

claimant has the responsibility of monitoring his case by way of postal mail, electronic mail or telephonic communication, when necessary.

4. DEFINITIONS.

a. **Catastrophe.** An accident resulting in five or more agency and/or nonagency people being hospitalized for inpatient care.

b. **Compensation.** Compensation is based on the loss of an employee's wages. It is subject to an individual case review that is based on the facts of the injury and the amount of duty time lost. Employees cannot receive compensation while in a sick or annual leave status.

c. **Continuation of pay (COP).** A traumatically injured employee is entitled to continuation of regular pay for a period not to exceed 45 calendar days. Such COP is subject to taxes and all other usual payroll deductions. The COP is paid directly to the employee out of the employing agency's operating budget.

d. **Controversion.** The formal administrative procedure through which the FECA Administrator, employing agency, or supervisor presents evidence to the OWCP to challenge an employee's claim for compensation. Claims may be controverted for COP when clearly in conflict with the provisions of the regulations and laws, where there is serious doubt as to the validity of the claim, or where otherwise appropriate.

e. **Fatality.** Death resulting from either work related injury (traumatic) or illness/disease (occupational).

f. **Limited duty/Modified duty.** The temporary assignment to approved productive tasks for an employee who is recovering from a job-related injury or illness when temporarily unable to perform his full regular duties. The employee's return to work on an altered basis must be authorized by the DOL, and the tasks assigned must be fully consistent with the treating physician's specific restrictions. These restrictions must be adhered to until the treating physician or a DOL assigned physician has cleared the employee to return to regular duty, or assigned permanent restrictions. Federal law, 20 CFR, requires the employee to accept altered duty that meets the medical restrictions.

g. **Lost-time case.** A nonfatal traumatic injury that causes a disability for an injured employee to perform work beyond the day or shift on which it occurred; or a nonfatal illness/disease (occupational) that causes disability at any time.

h. **No-lost-time case.** A nonfatal injury (traumatic) or illness/disease (occupational) that does not meet the definition of lost-time case in paragraph g. above.

i. **Nonemergency.** A situation not considered to be life threatening.

j. **Occupational disease/illness.** A medically documented condition or disease produced by the work environment resulting in the inability of the affected employee to perform in a regular duty status.

k. **Periodic roll.** For long-term disability cases, generally exceeding 90 days, the OWCP places an individual on this list to automatically receive a compensation check every 28 days, as long as a medical disability note is provided from the treating physician.

l. **Recurrence.** When, after returning to work, an injured employee is again disabled, without sustaining a new injury, and stops work as a result of the original injury. At such time, a CA2a must be filed through the FECA Office and forwarded to DOL for approval or denial.

m. **Traumatic injury.** A wound or other condition of the body caused by external force including stress or strain. The injury must be identifiable by time and place of occurrence, and part or function of the body affected. The injury must be the result of a specific event or incident (or series of events or incidents) within a single day or work shift.

5. FORMS.

a. All DOL forms are to be maintained in the Workers' Compensation Office. The only exception is the CA16 that can be provided solely by an agency physician or the FECA Administrator or Program Manager.

b. Record of Injury, SSB Form 1236, 1 Feb 00 is required to be filled out at the time of the accident.

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c. DA Form 285-AB-R, Jul 94, U.S. Army Abbreviated Ground Accident Report (AGAR). This form is required to report all safety related accidents/injuries IAW APGR 385-4, The APG Safety and Occupational Health Program.

6. COVERAGE.

a. The FECA provides compensation and medical care for all civilian employees of the United States (including any Federal agency of the United States) for disability due to personal injury sustained while in the performance of duty. An employee on temporary duty or in travel status is generally covered 24 hours for any reasonable incident during such status. An exception is made when the employee has taken leave for his personal convenience, or when he becomes involved in a personal situation unrelated to his mission. An employee is not covered by compensation for injuries sustained while traveling to and from his place of employment (before he reaches or after he departs Government premises). Should the injury or death be caused by willful misconduct on the part of the employee, by the employee's intention to bring about the injury, or death of himself or of another person, or solely caused by the intoxication of the injured party, compensation will not be paid.

b. An employee injured in the performance of duty will be considered in a duty status and will not be charged leave for the time required to obtain emergency examination or on the day of the injury. If the employee is in an overtime status, he will be paid only for the actual hours worked. Should the injury occur prior to the starting time of the scheduled shift, lost time will be charged to sick, annual, Continuation of Pay, or Leave Without Pay (LWOP).

c. An employee in a LWOP status, who is receiving compensation, will be returned to his old job or an equivalent position, if he recovers from his injury or disability within a one-year period following the injury or recurrence of that same injury. If an employee's LWOP extends for more than one year, the employee will be counseled with regard to his options.

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7. PENALTIES.

a. Any person who makes a false statement to obtain Federal employees' compensation, or who accepts compensation payment to which he is not entitled is subject to a fine of not more than \$10,000 or imprisonment for not more than five years, or both (18 USC 287 and 1001). Such a person is also subject to corrective administrative action including removal from the Federal service for the above violations. Corrective action will also be pursued when an "attempt" to fraudulently obtain benefits occurs.

b. Any person charged with the responsibility for making reports in connection with an injury who willfully fails, neglects, or refuses to do so; knowingly files a false report; induces, compels, or directs an injured employee to forego filing a claim; or willfully retains any notice, report, or documentation required in connection with an injury, is subject to a fine of not more than \$10,000 or imprisonment for not more than five years of both. Such person is also subject to corrective administrative action including removal from the Federal service.

8. PROCEDURES.

a. Each supervisor is responsible for notifying the FECA Office of all lost time injuries or illnesses within two working days from the date of the accident, or illness notification. In order to comply with Executive Order 12866, and subsequent Presidential initiatives relative to FECA, and 20 CFR 10.110(a), APG requires that all associated paperwork for filing a compensation claim will be completed by the supervisor, the FECA Administrator, and the injured employee, together, during a scheduled meeting, in the FECA Office. All CA1, CA2, and CA2a forms require original signatures of the injured employee and his supervisor. At the discretion of the FECA Administrator, cases with extenuating circumstances will be handled in an alternative means to accomplish filing a claim in the required time frame for compliance with the stated Federal laws.

b. All DOL forms will be maintained and disseminated solely by the FECA Administrator.

c. The FECA Administrator, prior to supervisor certification of Time and Attendance cards, must approve all Continuation of Pay status.

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d. A claimant must authorize, in writing, an individual to represent him in regard to a claim under the FECA, unless that individual's service as a representative would violate any applicable provision of law, such as USC 205 and 208).

A Federal employee may act as a representative **ONLY:**

(1) On behalf of immediate family members, defined as a spouse, children, parents, and siblings of the injured employee, provided no fee or gratuity is charged; or

(2) While acting as the union representative, defined as any officially sanctioned union official for their bargaining unit, and no fee or gratuity is charged.

9. RESPONSIBILITIES.

a. Employees will:

(1) Choose to be treated at a government medical facility if one is available, or by any licensed physician in private practice who is not excluded. An employee is entitled to initial choice of physician for treatment of an injury.

(2) Abide by all safety rules and report unsafe conditions to his supervisor.

(3) Report traumatic injuries or occupational diseases to his supervisor immediately.

(4) Follow the instructions of the attending physician while receiving treatment.

(5) Follow the procedures and policies established and in place IAW this regulation and the FECA.

(6) Provide the FECA Administrator with all medical reports, duty status reports from the treating physician and case related documentation. If the employee does not provide the FECA Office with the documentation necessary to maintain the claim file, the FECA Office will not be able to assist in the management of the employee's claim, due to lack of supporting documentation.

b. Supervisors will:

(1) Ensure that injured employees receive or are offered medical attention immediately. In the event an employee refuses treatment, a waiver form should be completed.

(2) Controvert traumatic injury claims, when there is sufficient reason, and advise employees of the action being taken, including reason(s) for the controversion. When appropriate, discuss the facts with witnesses, higher-level supervisors, medical and safety officials, and/or the FECA Administrator.

(3) Meet with the FECA Administrator and injured employee, together, in the FECA Office, located in building 4304, to file DOL paperwork, in compliance with Executive Order 12866, including consecutive Presidential initiatives, and 20 CFR 10.102(a). Cases with extenuating circumstances can be handled in an alternative means to accomplish filing a claim in a timely manner compliant with the stated Federal law.

(4) Remain active throughout the case and be an active team player in the resolve to return the injured employee back to work as soon as medically feasible.

(5) Ensure that safety precautions are observed at all times. Be constantly on alert for possible safety hazards, and notify the Installation Safety Division within 24 hours of accident/injury. Submit forms required by APGR AR 385-40, Accident Reporting and Records, and APGR 385-4, The APG Safety and Occupational Health Program, when an injury occurs. Forms used include DA Form 285-AB-R, Jul 94, U.S. Army Abbreviated Ground Accident Report (AGAR), and SSB Form 1236, 1 Feb 00.

(6) Provide payroll documentation certifying sick or annual leave, COP, LWOP, or absent without leave (AWOL). Ensure report for lost days, restricted, COP days every pay period.

(7) Ensure all employees who have been absent from work for a job-related injury report to the FECA Office before returning to duty.

(8) Attend Supervisory Workers' Compensation Training.

(9) Advise the FECA Administrator, in writing, of any suspected fraud in a FECA case.

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(10) Document counseling sessions given to employee for not following safe work practices. Copies of all documented reprimands will be furnished to the FECA Office, in the event of a controversion of a claim.

c. Occupational Health staff will:

(1) Provide treatment and/or referrals, with a DOL Form CA16, if the employee needs to be referred to a specialist as a result of an on the job injury. A copy of all CA16s issued will be forwarded to the FECA Office.

(2) Refer all on the job injuries, or employees presenting with a job related illness, to the FECA Office to establish a Workers' Compensation Claim, following initial treatment.

(3) Provide medical notes relative to the employee's job related injury or illness directly to the FECA Office to verify causal relationship in support of the Workers' Compensation claim. A medical release form must be signed by the injured employee to release medical documentation, relative to the on-the-job injury, to the FECA Office.

d. The FECA Administrator will:

(1) Assist employees and supervisors in the preparation of DOL forms associated with injuries, occupational disease, or deaths, and any compensation claims as a result of such events.

(2) Process claims in compliance with the 20 CFR 10.102(a).for claims involving lost time and cost incurred to DOL within 10 working days.

(3) Determine upon injury, occupational disease, or death of any employee, the individuals to be contacted, and notify them immediately.

(4) Assist supervisors if a claim is challenged and/or controverted.

(5) Work with supervisor and CPAC to return injured or ill employee to regular, or modified duty as soon as medically feasible.

(6) Conduct Supervisory Workers' Compensation Training for all supervisors and timekeepers. Conduct refresher classes upon request.

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(7) Maintain the compensation case files with all forms and information about the injured employee, including a case log. NOTE: If the employee does not provide the FECA Administrator with the documentation necessary to maintain the claim file, the FECA Office will not be able to assist in the management of the claim, due to lack of information.

(8) Coordinate and maintain close liaison with supervisor, employee, the FECA Working Group, safety and medical personnel, OWCP, and other appropriate points of contact during case management.

(9) Provide FECA Working Group with copies of all CA1 and CA2 forms, relative to the area they represent, during meeting, and upon request from any group member.

(10) Review and validate DOL charge back billing information for Aberdeen Proving Ground.

(11) Refer suspected fraud cases to CID for follow-up.

(12) Advise the appropriate Safety Office, Garrison or tenant, of job related injuries that require a safety evaluation of the jobsite.

e. The FECA Working Group will:

(1) Meet on a monthly basis to evaluate all CA1, CA2, CA2a forms for agency actions, possible controversion, and/or investigation of workplace deficiencies, to ensure all FECA benefits, appropriate compensation and medical treatment is received by the injured/ill employee.

(2) Develop and publicize compensation information as policies and/or procedures change to inform the workforce for compliance with Federal Employee Compensation laws.

f. Workers' Compensation Program Manager will:

(1) Manage and monitor the Workers' Compensation Program, and FECA Office.

(2) Compare compensation data with accident reporting data.

(3) Maintain statistical data for trend analysis, budgetary requirements, risk management and reporting purposes.

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(4) Develop targeted countermeasure programs based on analysis of claim data.

(5) Interface with the FECA Working Group.

(6) Promote safety education and awareness.

(7) Analyze compensation claim data for trends.

g. Resource Management will:

Distribute chargeback costs to tenant organizations from Department of Labor data provided by the Workers' Compensation Program Manager.

10. REFERENCES.

a. Federal Employees' Compensation Act, October 1974.

b. 20 CFR Part 10, Part III Department of Labor, 1 April 2001

c. Department of Labor Publication CA-810, Revised January 1999.

d. Executive Order 12866, and all successive Presidential Initiatives relative to Federal Employee Workers' Compensation.

e. The Privacy Act of 1974 (5 USC 552a).

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APPENDIX A

THE TRUTH ABOUT "CLINIC FIRST"

The employer has no legal right to require the employee to undergo an examination at the employee health clinic when filing a FECA claim. In fact, the law states that the employer may not make any such requirement of the employee.

A review of Department of Labor Publication CA 1-, Injury Compensation for Federal Employees, Section 6-3, addresses this issue:

"A. Initial Choice. An employee is entitled to initial choice of physician for treatment of an injury. He or she may choose any licensed physician in private practice who is not excluded, or he or she may choose to be treated at a government medical facility if one is available. Such facilities include hospital s of the Army, Navy, Air Force, and Department of Veterans Affairs and their medical officers.

Agency personnel may not interfere with the employee's right to choose a physician, nor may they require an employee to go to a physician who is employed by or under contract to the agency before going to the physician of the employee's choice. Agency personnel may contact the attending physician only to obtain additional information about or clarify the employee's duty status or medical progress, and only in writing."

The Federal Employee Compensation Act (FECA) regulations further discuss this issue.

"20 CFR, section 10.324 May an employer require an employee to undergo a physical examination in connection with a work-related injury?

The employer may have authority independent of the FECA to require the employee to undergo a medical examination to determine whether he or she meets the medical requirements of the position held or can perform the duties of that position. Nothing in the FECA or in this part affects such authority. However, no agency-required examination or related activity shall interfere with the employee's initial

choice of physician or the provision of any authorized examination or treatment, including the issuance of Form CA-16."

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Furthermore, when the worker gives notification he has sustained an injury, notification of his right to choice of physician is required. The Federal Employees' Compensation Act regulations explains the employer's responsibilities:

"20 CFR, section 10.300(d): What are the basic rules for authorizing emergency medical care?

(d) The employer should advise the employee of the right to his or her initial choice of physician. The employer shall allow the employee to select a qualified physician, after advising him or her of those physicians excluded under subpart I of this part. The physician may be in private practice, including a health maintenance organization (HMO), or employed by a Federal agency such as the Department of the Army, Navy, Air Force or Veterans Affairs. Any qualified physician may provide initial treatment of a work-related injury in an emergency. See also, section 10.825(b).

The penalties for violating the laws and regulations are rigid. "Clinic First" is considered obstruction of the Federal Employees' Compensation Act. 19 USC, Section 1922, the penalties:

Sec. 1922. False or withheld report concerning Federal employees' compensation.

Whoever, being an officer or employee of the United States charged with the responsibility for making the reports of the immediate superior specified by section 8120 of title 5, willfully fails, neglects, or refuses to make any of the reports, or knowingly files a false report, or induces, compels, or directs an injured employee to forego filing of any claim for compensation or other benefits provided under subchapter I of chapter 81 of title 5 or any extension or application thereof, or willfully retains any notice, report claim, or paper which is required to be filed under that subchapter or any extension or application thereof, or regulations prescribed thereunder, shall be fined under this title or imprisoned not more than one year, or both.

